IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3866 OF 1984

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

VINODCHANDRA B PANDIT
VERSUS
BANK OF INDIA & ORS.

Appearance:
MR AK CLERK for the Petitioner
MR NANDISH CHUDGAR for the Respondent

Coram: S.K. Keshote,J
Date of decision:09/05/1997

C.A.V.JUDGMENT

The petitioner, an officer of the Bank of India,

challenges by this Special Civil Application, filed under Article 226 of the Constitution of India, the order of the disciplinary authority, annexure `F', dated 28th June 1983, under which penalty of removal from the services was given and further orders annexures `H' & `J' of the Appellate Authorities, dated 24th October 1983 and 7th June 1984, respectively, under which the order annexure `F' was confirmed.

2. The petitioner was removed from the services after holding full fledged departmental inquiry. The petitioner was given detailed chargesheet vide memo dated 10th August 1982, to which the petitioner has submitted his reply. After completion of inquiry, the inquiry officer submitted a report to the disciplinary authority, who after considering the same and other record, under the order dated 28th June 1983, ordered for removal of the petitioner from services. It is not in dispute that alongwith the order of respondent of removal of petitioner from services, copy of inquiry report was sent to the petitioner. The petitioner preferred an appeal against the aforesaid order to the Appellate Authority which came to be dismissed under the order dated 24th October 1983. Hence this Special Civil Application.

3. This Special Civil Application came to be accepted by this Court under the order dated 17th September 1991. The Special Civil Application was accepted only on the ground that the copy of the inquiry report was not supplied to the petitioner before he was held to be guilty by the disciplinary authority. The respondent-Bank preferred Letters Patent Appeal and the same came to be dismissed by the Division Bench of this Court. Thereafter the Bank has taken up the matter to the Hon'ble Supreme Court by filing Civil Appeal No.302 of 1992, which was allowed and the matter was remitted back to this Court to decide other points raised by the petitioner in this Special Civil Application. The Division Bench of this Court, under the order dated 16th October 1996, sent the matter to the Single Judge for deciding other points raised by the petitioner in the Special Civil Application.

4. The learned counsel for the petitioner, Shri A.K. Clerk, contended that the petitioner was not given three important documents by the Bank. These documents are; (i) first copy of the report of investigation by CBI, (ii) the letters written by Shri P.R. Bhatt to the Bank on the basis of which inquiry was initiated and (iii) report of the preliminary inquiry conducted by Security Officer of the Bank. The learned counsel for the

petitioner contended that for want of report of CBI, the petitioner could not effectively cross-examine the CBI Inspector as well as other witnesses produced in the inquiry against him. In support of this contention, the learned counsel for the petitioner placed reliance on decision of Apex Court in the case of State Bank of India v. D.C. Aggarwal & Anr., reported in (1993)1 SCC 13. Reliance has also been placed on Regulation 10(b)(II)(iii), 11 and 12 of the Bank of India Officers/Employees Discipline and Appeal Regulations, 1976. Second contention raised is that complaints have not been made by the borrower or guarantor, either in writing or orally, that the petitioner demanded or accepted illegal gratification. The third contention of the learned counsel for the petitioner is that none of borrowers or guarantors is examined during the inquiry by the Bank in case of three incidents. In case of two incidents, co-borrowers are examined. The main borrower is not examined in any of the five incidents and the charge is sought to be proved by examining third parties. The fourth contention of the learned counsel for the petitioner is that out of the five accounts for which the charge is held to be proved, two accounts have been closed on repayment of loan even before issuance of the chargesheet. The fifth contention is that the report of Inquiry Officer is based on no evidence and is perverse and as such no reasonable man could have arrived at the said decision on the basis of material on record. In support of this contention, the learned counsel for the petitioner placed reliance on two decisions, one of the Apex Court, in the case of Sawai Singh v. State of Rajasthan, reported in AIR 1986 SC 995 and of this Court in the case of Siddharth Mohanlal Sharma v. South Gujarat University, reported in 23(1) GLR 233. Sixth contention of the learned counsel for the petitioner is that the chargesheet is vague and lacking in material particulars. Further contention of the learned counsel for the petitioner is that the chargesheet was issued after inordinate delay of 5 to 7 years. In support of this contention, reliance has been placed by the counsel for the petitioner on decision of this Court in the case of Mohanbhai Dungarbhai Parmar v. Y.B. Zala & Anr., reported in 20(1) GLR 497. The last contention is that the penalty of removal, which has been given to the petitioner in the present case, by disciplinary authority and as confirmed by the Appellate Authority is excessive and disproportionate to the guilt proved against the petitioner.

5. On the other hand, Shri Nandish Chudgar, learned counsel for the respondent, contended that CBI report,

letters written by Shri P.R. Bhatt to the Bank as well as report of preliminary inquiry conducted by the Security Officer were not produced by the Bank in the inquiry. It is urged that these documents were not relied upon by the Inquiry Officer to hold the petitioner guilty of charges. These documents not being the part of the inquiry, it was not obligatory on the part of respondent to give copies of the same to the petitioner. Otherwise also, merely on non supply of these documents, the inquiry as well as the order of penalty will not vitiate as the petitioner has failed to establish that non supply of these documents has caused any prejudice to him. It has next been contended that for the purpose of cross examination of CBI Inspector and the Security Officer of the Bank, who were examined as Bank witnesses in the inquiry against the petitioner, these documents were not necessary nor the petitioner has given out how these documents were necessary for this purpose. These two persons have given statements that they have made preliminary inquiry/investigation against the petitioner wherein they have examined witnesses and those witnesses have admitted that the petitioner has accepted from them, bribe for sanction of loan in favour of loanees. The copies of the statements of the persons who have been examined by CBI in investigation has been furnished to the petitioner and the case against the petitioner is based on direct evidence which has been recorded in the inquiry. The learned counsel for the respondent further contended it is hardly of any substance that the borrower or guarantor has not made any complaint, but the question is whether the petitioner has accepted bribe to sanction the loan to the loanees or not, and this question has been proved in the present case on the basis of substantial evidence produced by the Bank. Otherwise also, it is hardly of any substance that the borrower or guarantor were not examined, where the evidence has been produced in the inquiry of the persons who were directly connected with the loan and who have given bribe to the petitioner. Out of five accounts, if two accounts have been closed on repayment, the guilt of petitioner will not come to an end. The report of the Inquiry Officer is based on the evidence and the petitioner has been provided sufficient opportunity to cross-examine those witnesses, but he failed to get out anything from those witnesses in his favour. The chargesheet is not vague or lacking in material particulars. Moreover, this point was never raised by the petitioner during the course of inquiry. He has allowed the inquiry to be completed and then only, he has raised all these objections before this Court. There are serious charges against the petitioner of accepting illegal gratification (corruption) and as

such, even if some delay in issuance of chargesheet is there, it is not fatal to the case. Replying to the last contention of the learned counsel for the petitioner, the learned counsel for the respondent contended that in the case where charges of acceptance of illegal gratification have been proved against the petitioner, the minimum penalty could have been removal or dismissal of the delinquent officer from the services and as such, it cannot be said to be a case of excessive or disproportionate punishment. In support of his contentions, the learned counsel for the respondent placed reliance on the following decisions of the Apex Court:

Krishna Chandra Tandon v. Union of India
-- (1974)4 SCC 374

State Bank of India & Ors. v. Samrendra Kishore Endow & Anr.
-- (1994)2 SCC 537

B.C. Chaturvedi v. Union of India & Ors.
-- (1995)6 SCC 749

State Bank of Patiala v. S.K. Sharma
-- JT 1996 (3) SC 722

6. In the rejoinder, the learned counsel for the petitioner cited decision of the Apex Court in the case of Union of India v. H.C. Goel, reported in AIR 1964 SC 364 .

7. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

8. From the article of charges and the statement of allegations of charges, which have been produced on record, it cannot be said that the chargesheet is vague and lacking in any material particulars. The respondents, in the chargesheet, have given out elaborately the charges which have been framed against the petitioner. Moreover, I do not find anything on the record from the Special Civil Application as well as it is not the contention of the learned counsel for the petitioner that immediately after receipt of chargesheet or thereafter, during the course of inquiry, the petitioner has made any complaint that the chargesheet is vague and lacking any material particulars. Over and above this, the learned counsel for the petitioner has failed to show any vagueness or anything lacking in the material particulars in the chargesheet. In view of this

fact, I do not find any substance in the contention of the learned counsel for the petitioner that the chargesheet is vague and lacking any material particulars.

9. The hearing of this case commenced in this Court from 26th November 1996, which has been adjourned from time to time. During the course of hearing of this Special Civil Application, this Court has directed the respondent-Bank to bring for perusal of this Court, investigation report made by the CBI in this case, the preliminary inquiry report as well as letters which have been written by Shri Bhatt to the Bank from time to time. The learned counsel for the respondent-Bank has not only produced these three documents before this Curt, but copy of these documents has also been given to the counsel for the petitioner. The learned counsel for the respondent contended that the letters which have been written by Shri Bhatt, Manager of the Branch concerned, are part of preliminary inquiry report. The learned counsel for the petitioner, after receipt of these documents, is unable to point out how these documents could have been of any relevance for the purpose of cross-examining the witnesses of the Bank, namely the CBI Inspector and the officer of the Vigilance Section of the Bank. The learned counsel for the petitioner has not advanced any arguments on the basis of these documents during the course of arguments in this behalf. So this fact goes against the petitioner and this plea of non supply of documents was taken only for the sake of objection and it was not a case where the petitioner, in substance, really needed these documents for the purpose of cross-examining those witnesses. It is true that these documents have been prayed for by the petitioner. These documents can be classified in three categories, namely, (i) Investigation report of CBI, (ii) Report of preliminary inquiry conducted by Vigilance Section of the Bank, and (iii) Letters which were written by Shri Bhatt, the then Branch manager to the Bank. The letters of Shri Bhatt form part of preliminary inquiry report. On the basis of those letters, it appears that the preliminary inquiry has been conducted against the petitioner in the present case to find out whether the allegations made against the petitioner has any substance and whether it is a case where inquiry should be conducted or not. The purpose of preliminary inquiry report is only to prima-facie find out whether the allegations made against the delinquent employee/officer are true and further to decide whether on these allegations, the departmental inquiry should be held or not. On initiation of departmental inquiry, the preliminary inquiry report loses its significance and

importance. The report of the preliminary inquiry is not a document to be given to the delinquent employee/officer where full fledges inquiry has been held against him on the charges framed. The preliminary inquiry is nothing to do with the inquiry conducted after issue of chargesheet. As stated earlier, the former action would be to find whether the disciplinary inquiry should be initiated against the delinquent employee/officer or not. After full fledged inquiry was held, the preliminary inquiry loses its importance. A reference in this respect may have to the decision of Apex Court in the case of Narayan Dattatraya Ramteerthakar v. State of Maharashtra & Ors., reported in (1997)1 SCC 299. In view of this fact and the position of law as discussed above, the grievance of the petitioner made on the ground of non supply of preliminary inquiry report deserves no acceptance. The grievance of the petitioner for non supply of letters of the then Branch Manager Shri Bhatt is also of no substance. These letters formed part of preliminary inquiry report and when the preliminary inquiry report was not required to be given to the petitioner, how the claim of the petitioner for supply of these documents can be accepted. Moreover, the petitioner has failed to establish how any prejudice has resulted to him for non supply of these documents. As earlier observed, these letters were relevant only for the purpose of forming opinion whether prima-facie case is there against the petitioner for holding inquiry or not and these documents have lost importance when the full fledged departmental inquiry was held.

10. The CBI conducted investigation in the present case to examine the aspect of criminal liabilities of the petitioner and during the course of that investigation, naturally statements of many persons connected with the matter have to be recorded. The scope of investigation by CBI and the full fledged departmental inquiry on misconduct alleged against the petitioner are altogether different, and both these are different fields. However, the CBI has conducted the investigation and has recorded statements of many of the persons who stated before it that the petitioner accepted illegal gratification for sanction of loan, and many of them have been examined in the departmental inquiry. The petitioner has not made any grievance that copies of the statements of the witnesses examined by the CBI during investigation have not been given. I find sufficient merits in the contention of the learned counsel for the respondent-Bank that only documents which form part of the inquiry report and particularly on which, reliance is placed by the Inquiry Officer, to hold the delinquent employee/officer

to be guilty of the charges, have to be furnished. The CBI investigation report was not produced and relied in the inquiry by the Bank and as such it does not form part of the inquiry proceedings. Not only this, the learned counsel for the petitioner has failed to point out from the inquiry report that the Inquiry Officer has placed reliance on the CBI investigation report to hold the petitioner guilty of charges found proved against him. Reference has only been made to the statement of CBI Investigating Officer and the Vigilance Officer of the Bank as well as other witnesses. It is not in dispute that the petitioner has cross-examined all these witnesses. The learned counsel for the petitioner further failed to point out any relevance of these documents in the inquiry. Secondly, though the petitioner raised the point that CBI investigation report was necessary for cross-examination of the CBI Investigating Officer, but as stated earlier, he failed to point out any relevancy of this inquiry report for the cross-examination of witnesses. The learned counsel for the petitioner is unable to satisfy this Court that for non supply of CBI investigation report, any prejudice has been caused to the petitioner. It is not the case of the petitioner that the copy of the CBI investigation report was required by him for his defence. It is also not the case of the petitioner that the CBI inquiry report in any way supports the case of the petitioner. The only grievance is that non supply of the same has resulted in denial of effective right of cross-examination of witness, the CBI Investigating Officer. The fact that after receipt of the CBI investigating report, the learned counsel for the petitioner is unable to point out how it was relevant to cross examine the Investigating Officer of CBI, goes against the petitioner. The CBI investigation report was not produced in the inquiry by the Bank and it is not a part of the inquiry proceedings nor any reliance has been placed on it by the Inquiry Officer to hold the petitioner guilty of charges and it is also not a case where it can be said that any prejudice is caused to the petitioner by non supply of the same.

11. The learned counsel for the petitioner, during the course of arguments, made reference to the regulations of the Bank, but has not produced those regulations for the perusal of the Court. I consider it to be advantageous to make reference to the decision of Hon'ble Supreme Court in the case of State Bank of Patiala & Ors. v. S.K. Sharma, reported in 1996(3) SCC 364 = JT 1996(3) SC 722. While dealing with the State Bank of Patiala (Officers) Service Regulation, 1979, the

Apex Court held;

10. Sub-clause (iii) aforesaid is indisputably part of a regulation made in exercise of statutory authority. the sub-clause incorporates a facet of the principle of natural justice. It is designed to provide an adequate opportunity to the delinquent officer to cross-examine the witnesses effectively and thereby defend himself properly. It is relevant to note in this behalf that neither the enquiry officers' report nor the judgment of the trial court, appellate court or High Court say that the respondent had protested at the relevant time that he was denied an adequate opportunity to cross-examine the witnesses effectively or to defend himself properly on account of non-supply of the statements of witnesses. The appellate court, on the contrary, has recorded that when he was advised to peruse, examine and take notes from the documents including the statements of witnesses (Kaur Singh and Balwant Singh), the only objection raised by the respondent was that "the documents marked Exhs. P-6, P-10 and P-11 were only photostat copies and not originals and should not be considered or marked exhibits". (Exhs. P-6, P-10 and P-11 are documents other the statements of witnesses, i.e. of Kaur Sing and Balwant Singh.) Moreover, as pointed out above, the examination of witnesses began long after the expiry of three days from the day on which the respondent was advised to and he did peruse the documents and statements of witnesses. In the circumstances, it is possible to say that there has been a substantial compliance with the aforesaid sub-clause (iii) in the facts and circumstances of this case, though not a full compliance. This, in turn, raises the question whether each and every violation of rules or regulations governing the enquiry automatically vitiates the enquiry and the punishment awarded or whether the test of substantial compliance can be invoked in cases of such violation and whether the issue has to be examined from the point of view of prejudice. So far as the position obtaining under the Code of Civil Procedure and the Code of Criminal Procedure is concerned, there are specific provisions thereunder providing for such situation. There is Section 99 of the Code of Civil Procedure and Chapter 35 of the Code of Criminal Procedure. Section 99 of

CPC says:

> "No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, nor affecting the merits of the case of the jurisdiction of the Court."

Section 465(1) of the Criminal Procedure Code, which occurs in Chapter 35 similarly provides that:

> "Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this code, or any error, or irregularity in any sanction for the prosecution. Unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby."

12. It would be appropriate to pause here and clarify a doubt which one may entertain with respect to the principles aforestated. The several procedural provisions governing the disciplinary enquiries (whether provided by rules made under the proviso to Article 309 of the Constitution, under regulations made by statutory bodies in exercise of the power conferred by a statute or for that matter, by way of a statute) are nothing but elaboration of the principles of natural justice and their several facets. It is a case of codification of the several facets of rule of audi alteram partem or the rule against bias. One may ask, if a decision arrived at in violation of principles of natural justice is void, how come a decision arrived at in violation of rules /regulations/ statutory provisions incorporating the said rules can be said to be not void in certain situations. It is this doubt

which needs a clarification -- which in turn calls for a discussion of the question whether a decision arrived at in violation of any and every facet of principles of natural justice is void.

29. the matter can be looked at from the angle of justice or of natural justice also. The object of the principles of natural justice -which are now understood as synonymous with the obligation to provide a fair hearing -- is to ensure that justice is done, that there is no failure of justice and that every person whose rights are going to be affected by the proposed action gets a fair hearing. The said objective can be tested with reference to sub-clause (iii) concerned here. It says that copies of statements of witnesses should be furnished to the delinquent officer "not later than three days before the commencement of the examination of the witnesses by the inquiring authority". Now take a case -- not the one before us -- where the copies of statements are supplied only two days before the commencement of examination of witnesses instead of three days. The delinquent officer does not object; he does not say that two days are not sufficient for him to prepare himself for cross-examining the witnesses. The enquiry is concluded and he is punished. Is the entire enquiry and the punishment awarded to be set aside on the only ground that instead of three days before, the statements were supplied only two days before the commencement of the examination of witnesses? It is suggested by the appellate court that sub-clause (iii) is mandatory since it uses the expression `shall'. merely because the word `shall' is used, it is not possible to agree that it is mandatory. We shall, however, assume it to be so for the purpose of this discussion. But then even a mandatory requirement can be waived by the person concerned if such mandatory provision is conceived in his interest and not in public interest, vide Dhirendra Nath Gorai v. Sudhir Chandra Ghosh (AIR 1964 SC 1300). Subba Rao, J., speaking for the Court, held:

"Where the court acts without inherent jurisdiction, a party affected cannot by waiver confer jurisdiction on it, which it has not. Where such jurisdiction is not wanting, a directory provision can

> obviously be waived. But a mandatory provision can only be waived if it is not conceived in the public interests, but in the interests of the party that waives it. In the present case the executing court had inherent jurisdiction to sell the property. We have assumed that Section 35 of the Act is a mandatory provision. If so, the question is whether the said provision is conceived in the interests of the public or in the interests of the person affected by the non-observance of the provision. It is true that many provisions of the Act were conceived in the interests of the public, but the same cannot be said of Section 35 of the Act, which is really intended to protect the interests of a judgment-debtor and to see that a larger extent of his property than is necessary to discharge the debt is not sold. Many situations may be visualized when the judgment-debtor does not seek to take advantage of the benefit conferred on him under Section 35 of the Act."

31. Sub-clause (iii) is, without a doubt, conceived in the interest of the delinquent officer and hence, he could waive it. From his conduct, the respondent must be deemed to have waived it. This is an aspect which must be borne in mind while examining a complaint of non-observance of procedural rules governing such enquiries. It is trite to remember that, as a rule, all such procedural rules are designed to afford a full and proper opportunity to the delinquent officer/employee to defend himself and are, therefore, conceived in his interest. Hence, whether mandatory or directory, they would normally be conceived in his interest only.

12. As stated earlier, the learned counsel for the petitioner is unable to point out, despite of production of three documents before this Court, namely, letters, CBI report, and preliminary inquiry report, any relevancy thereof and that any prejudice has been caused in cross-examining any of the witnesses referred earlier in the inquiry by the petitioner. So this contention of the counsel for the petitioner stands answered by the aforesaid decision of the Apex Court and on which no further discussion needs to be gone into.

13. Before adverting to other contentions raised by the learned counsel for the petitioner, I consider it to be appropriate to first briefly make a reference to the decisions on which the counsel for the petitioner has placed reliance. In the case of Union of India v. H.C. Goel (supra), the Hon'ble Apex Court held that this Court, under Article 226 of the Constitution of India has jurisdiction, to deal with case of a public servant who had been dismissed or otherwise deal with so far as to attract Article 311(2) to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. The order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal, is based on no evidence. There cannot be any dispute of this proposition laid down by the Hon'ble Apex Court. In the case of Sawai Singh v. State of Rajasthan (supra), the Hon'ble Apex Court held that where the charges framed against the delinquent were vague and no allegations regarding it had been made by him before the Inquiry Officer or before the High Court, the fact that he has participated in the enquiry would not exonerate the department to bring home the charges. The enquiry based on such charges would stand vitiated being not fair. It has further been held that the report of the Inquiry Officer finding the delinquent officer guilty could not be sustained as the charges were vague and it was difficult to meet the charges fairly by the delinquent officer. The evidence adduced was perfunctory and did not at all bring home the guilt of the delinquent officer. Consequently, the order of termination of service of delinquent officer in that case was set aside. That case on which reliance has been placed by the learned counsel for the petitioner is of little help. It is not the case of the petitioner that the charges levelled against him are vague or indefinite. In the case of Siddharth Mohanlal Sharma v. South Gujarat University (supra), this Court, while dealing with the power of judicial review of this Court under Article 226 of the Constitution of India, held that the Court cannot sit in appeal over decision in the disciplinary inquiry.

Two exceptions to the aforesaid rule have been carved out; namely (i) where decision is based on no evidence and (ii) where decision is perverse or unreasonable. The Court has further held that both of aforesaid exceptions have common element. There cannot be any quarrel on this proposition laid down by the Court. Mohanbhai Dungarbhai Parmar v. Y.B. Zala & Anr. (supra), this Court has taken a view that disciplinary action against the delinquent employee should be taken within a reasonable time. Having regard to the nature and contents of the charges in that case, delay of about 1 1/2 years was considered to be fatal from the point of view of affording reasonable opportunity to the delinquent employee therein to show cause against the charges levelled against him. In the case of State Bank of India v. D.C. Aggarwal & Anr. (supra), the Hon'ble Supreme Court held that the disciplinary authority, while imposing punishment, major or minor, cannot act on material which is neither supplied nor shown to the delinquent. Imposition of punishment on an employee on material which is not only not supplied, but not disclosed to him, cannot be countenanced. Procedural fairness is as much essence of right and principle as the substantive law itself. There cannot be any quarrel with the proposition laid down by the Apex Court.

14. There were in all 12 instances where the petitioner, while sanctioning loans to the borrowers, has demanded and taken illegal gratification. However, it is not in dispute that out of 12 such instances, only five instances were found to be proved against the petitioner. The learned counsel for the petitioner has given those five instances in a concise tabular form. To prove the guilt of the petitioner which are the subject matter of these five instances, witnesses have been examined. The first instance is of sanctioning agricultural loan to four borrowers, namely Shri Joitabhai Haridas Patel and others. The sanctioned amount of loan in this case was Rs.49,500/- and demanded amount of bribe was Rs.3,000/-. To prove this charge, two witnesses namely Shri Dahyabhai V. Nai and Shri Naranbhai H. Patel have been examined. Shri Dahyabhai is son of one of the borrowers Shri Vihbhai S. Nai. In the second instance, Shri Babubhai J. Chaudhari was examined who is son of Late Shri Joitabhai L. Chaudhari, one of the borrowers. In the third case, Shri Somabhai C. Chaudhari was examined, also a son of co-borrower, Shri Chhaganbhai B. Chaudhari. In the fourth instance, one of the co-borrowers, Shri Jasubhai G. Patel has been examined and lastly in the fifth instance, one co-borrower, Shri Kashiram Bechardas Patel, and one non-borrower, Shri

Ranchhodbhai K. Patel, have been examined. The learned counsel for the Bank has brought relevant record of inquiry. The statements of witnesses aforesaid have been produced. Though this Court is not sitting as an Appellate Court nor it has appellate jurisdiction in the disciplinary matters, for satisfaction of the learned counsel for the petitioner, he has been permitted to read the statements of relevant witnesses and he read accordingly. Out of the five cases, in one case, the one witness has not very categorically made a statement that any bribe has been demanded or bribe has been given to the petitioner, but in rest of the cases, there are evidence to this extent and after going through the statements of witnesses in all these cases, it cannot be said that it is a case of no evidence. It is equally settled law that this Court will not enter into the realm of appreciation of the evidence. The standard of proof in the departmental inquiry differs from the standard of proof in a criminal trial. Sufficiency of evidence is also not the area where this Court can go into. The finding of the inquiry officer has to be accepted unless the petitioner has made out the case that the finding is based on no evidence. In this case, after going through the statements of witnesses read by the counsel for the petitioner, it cannot be said that it is a case of no evidence. On testing the statements of witnesses recorded in this case, on the standard of proof of preponderance of probabilities, I do not find any wrong in the findings of the inquiry officer. In this respect, reference may have to the decision of Hon'ble Supreme Court in the case of Government of Tamilnadu & Anr. v. A. Rajapandian, reported in AIR 1995 SC 561. This Court has no jurisdiction to sit over the findings of the inquiry officer as Appellate Authority. It is for the satisfaction of the inquiry officer and disciplinary authority to decide on the basis of evidence whether the charges framed against the delinquent are proved or not. In the matter of disciplinary inquiry this Court can examine the procedural correctness of the decision making process and will not examine the matter as an Appellate Authority. Each case has to be decided on the basis of its own facts and in this case, much indulgence has been granted by this Court though that may not be available to the petitioner while exercising powers conferred to this Court under Article 226 of the Constitution of India. In fact, this Court permitted the counsel for the petitioner to argue the case as if it is an appellate Court. Even after permitting the counsel for the petitioner to read the statements, he is unable to make out any case of perversity in the findings of the inquiry officer. So the ratio of cases on which reliance has been placed by

the counsel for the petitioner is of little help to the petitioner in this case. In view of the facts of this case and the law on this point, it is not the case where the findings of the inquiry officer are perverse or are based on no evidence.

15. It is true that in some of the cases, the borrowers or guarantors were not examined. It is also equally true that complaint has not been made by borrowers against the petitioner, but the relevant evidence has been produced in this case. In the inquiry the persons who were directly connected with the sanction of loans and who have to deal with the petitioner in the matter of giving him illegal gratification, have been examined. Moreover, merely only on the ground that borrowers or guarantors have not been examined and complaint has not been filed by them, in the presence of evidence on record of this case, the petitioner cannot be exonerated of charges. The persons very closely related to the borrowers have been examined. The persons who have taken all steps for sanction of the loan on behalf of the borrowers have been examined. Similarly, the fact that in two instances, the accounts have been closed is hardly of any substance and relevance to the case in hand. Naturally the borrower is under an obligation to repay the loaned amount and in case he has paid the loaned amount, it cannot be assumed and presumed that he has not given any illegal gratification for sanction of the loan in his favour. I fail to see how this fact has any relevance to the charges levelled against the petitioner.

16. Further, the delay in initiation of departmental inquiry has to be viewed from manifold angles. The learned counsel for the petitioner has failed to point out any provision from the Regulations which prescribe limitation for initiation of departmental inquiry for misconduct. The delay in initiation of inquiry by itself will not be fatal to the case unless the petitioner establishes as a fact that such delay has resulted in causing prejudice to his defence. That is not the case here. In the writ petition, the petitioner has failed to point out how any prejudice has been caused to him because of delay in initiation of departmental inquiry. Even during the course of arguments also, the learned counsel for the petitioner has failed to point out how any prejudice has been caused to the petitioner for delay in initiation of departmental inquiry. In the appeal before the Appellate Authority, the petitioner has been afforded opportunity of personal hearing through his defence representative. I do not find from the order of

the Appellate Authority that the defence representative has raised this point before it. The memo of appeal is also on record of the Special Civil Application which runs in pages, but I do not find that this point has been taken therein. The learned counsel for the petitioner has also not pointed out that this point has been raised in the memo of appeal by the petitioner. In case the delay in initiation of inquiry would have resulted in denial of defence opportunity to the petitioner, then he should have raised this point at the earliest opportunity available to him. There is no dispute that such opportunity was at the stage when he has to submit reply to the chargesheet. This grievance has to be made by the petitioner at that stage and from the reply to the chargesheet which has been filed by the petitioner on record of Special Civil Application, I do not find that this complaint has been made by him. The fact that the petitioner has not made such complaint in the reply to the chargesheet and has not made any grievance on this count during the inquiry or before the Appellate Authority gives out that the petitioner never felt that this delay has resulted in denial of opportunity of defence to him. In the Special Civil Application, this point has been raised by the petitioner and a mere reading of the pleadings on this question go to show that this point has been raised by the petitioner's counsel taking clue from the authority referred in the pleadings. How the petitioner has pleaded this point in the Special Civil Application is to be noticed here. The relevant pleading in the Special Civil Application reads as under:

> The petitioner submits that the chargesheets dated 10th August, 1982 were issued in respect of the loans sanctioned during the period from 1975 to 1977 during the petitioner's tenure of Manager of the Pilvai Branch. Therefore, the chargesheets were issued after a long lapse of 5 to 7 years and having regard to the nature of the charges levelled against the petitioner delay in issuing the chargesheets itself has amounted denial of reasonable opportunity of hearing to the petitioner. This Hon'ble Court has held in the case of Mohansinh Vs. Y.B. Zala, 20 G.L.R. page 497 that having regard to the nature of charges and having regard to the facts and circumstances of the case, the delay of even about 1 1/2 years would amount to denial of reasonable opportunity. In the present case also the delay in issuance of chargesheets has materially prejudiced the defence.

A mere mention that delay in issuing the chargesheet itself has amounted to denial of reasonable opportunity is not sufficient. The petitioner should give out in details how the delay amounted to denial of reasonable opportunity of hearing, but nothing has been stated by him. The charges against the petitioner are very very serious in nature and in five cases, charges have been proved. In the absence of any material on record produced by the petitioner to show and establish how the delay has resulted in denial of reasonable opportunity of hearing to the petitioner coupled with seriousness of charges and the fact that this complaint has not been made by the petitioner at any stage during inquiry and before the Appellate Authority, I do not find any substance in this contention of the learned counsel for the petitioner.

17. Now I consider it to be appropriate to make again reference to the decision of this Court in the case of Mohansinh v. Y.B. Zala (supra), on which reliance has been placed by the learned counsel for the petitioner. In that case, the charges against the petitioner therein were that he remained absent in the morning parade and on some other occasions he was found absent when roll call was taken during the course of one month between November 15, 1971 and December 15, 1971. The departmental inquiry has been initiated against the petitioner therein about 1 1/2 years thereafter vide chargesheet dated 18th May 1973 and he was ordered to be removed from services. In the facts above and the charges against the petitioner in that case, this Court has held that "the very delay in initiation of proceedings must be held to constitute a denial of reasonable opportunity to defend himself for one cannot reasonably expect an employee to have a computer like memory or to maintain a day-to-day diary in which every small matter is meticulously recorded in anticipation of future eventualities of which he cannot have a prevision. Nor can he be expected to adduce evidence to establish his innoecnce for after inordinate delay, he would not recall the identity of the witness who could support him. Delay by itself therefore, will constitute denial of reasonaable opportunity to show cause. This would amount to violation of principles of natural justice and the impugned order must be struck down on this ground alone.

18. I consider it to be advantageous here to refer to the decision of Apex Court in the case of State of Punjab and Ors. v. Chaman Lal Goyal , reported in JT 1995(2) SC 18. The respondent therein had challenged the memo of charges communicated to him as well as the order of

appointing the Inquiry Officer to enquire into charges in the High Court on the ground of delay in serving the chargesheet. The High Court quashed the charges on the ground that the delay of 5 1/2 years in serving the memo of charges, for which there is no explanation is itself a ground for quashing the charges. On account of lapse of time, the Court held that it became more difficult for respondent to adduce evidence or to prove his innocence. Two other reasons have been given which I do not consider it to be necessary to reproduce here. The Hon'ble Supreme Court has, in para-10 of the judgment, held;

> Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. The cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing...."

In para-12 of the judgment, the Hon'ble Supreme Court held;

> The principles to be borne in mind in this behalf have been set out by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak & Anr. (1992(1) S.C.C. 225). Though the said case pertained to criminal prosecution, the principles enunciated therein are broadly applicable to a plea of delay in taking the disciplinary proceedings as well. In paragraph 86 of the

judgment, this court mentioned the propositions emerging from the several decisions considered therein and observed that "ultimately the court has to balance and weigh the several relevant factors - balancing test or balancing process an determine in each case whether the right to speedy trial has been denied in a given case". it has also been held that, ordinarily speaking, where the court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the conviction, as the case may be, will be quashed. At the same time, it has been observed that that is not the only course open to the court and that in a given case, the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. In such a case, it has been observed, it is open to the court to make such other appropriate order as it finds just and equitable in the circumstance of the case.

19. So from the above discussion, it comes out that the whole emphasis is on the fact that what is the nature of charges and whether by lapse of time, there is possibility of non availability of witnesses to be examined by the delinquent employee/officer in defence. In the case in hand, the petitioner has not made any grievance on this point, as stated earlier, at any point of time, earlier to filing of this Special Civil Application. Moreover, the charges are of very very serious in nature and it is observed by the Hon'ble Supreme Court that in a given case nature of sentence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. The petitioner was chargesheeted with serious charges of accepting illegal gratification while acting as a Manager in sanction of the loans to the borrowers and certainly in this case if the charges are quashed only on the ground of delay, it may not be in the interest of justice. Reference may also have to the decision of the Hon'ble Supreme Court in the case of B.C. Chaturvedi v. Union of India & Ors., reported in JT 1995(8) SC 65. While dealing with the question of delay in initiation of disciplinary proceedings, the Court thus observed in para-11;

The next question is whether the delay in initiating disciplinary proceeding is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the

> Constitution. Each case depends upon its own facts. In a case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. he may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardious journey, as the Government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases. It is seen that the C.B.I. had investigated and recommended that the evidence was not strong enough for successful prosecution of the appellant under Section 5(1)(e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of the Constitution.

So in view of the facts of this case, the charges against the petitioner and the law as laid down by the Hon'ble Supreme Court, this contention of the learned counsel for the petitioner is also devoid of any substance and cannot be accepted.

20. Now I may advert to the last contention raised by the learned counsel for the petitioner that the penalty of removal given to the petitioner is excessive and disproportionate to the guilt. In the case of State Bank of India v. Samarendra Kishore Endow & Anr., reported in JT 1994(1) SC 217, the Hon'ble Supreme Court, while dealing with the question of power of judicial review of this Court under Article 226 of the Constitution in the matter of imposition of punishment or penalty which can be lawfully imposed on proved misconduct of the employee/officer, held that this Court has no power to substitute its own discretion in the matter for that of disciplinary authority, nor this Court has jurisdiction

to impose any punishment to meet the ends of justice but what appropriate punishment should be for the delinquent employee/officer for proved misconduct is within the discretion and judgment of the disciplinary authority. However, the Appellate Authority may interfere with the same but not this Court under Article 226 of the Constitution of India. Further reference may have to the decision of Hon'ble Supreme Court in the case of B.C. Chaturvedi v. Union of India (supra). The Hon'ble Supreme Court, in this case, held that the High Court while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court, it would appropriately mould the relief, either directing the disciplinary/Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in an exceptional and rare cases, impose appropriate punishment, with cogent reasons in support thereof. Hon'ble Mr.Justice B.L.Hansaria, concurring in this judgment, observed:

21. I am in respectful agreement with all the conclusions reached by learned brother Ramaswamy, J. This concurring note is to express my view on two facets of the case. The first of these relates to the power of the High Court to do "complete justice", which power has been invoked in some cases by this Court to alter the punishment/penalty where the one awarded has been regarded as disproportionate, but denied to the High Courts. No doubt, Article 142 of the Constitution has specifically conferred the power of doing complete justice on this Court, to achieve which result it may pass such decree or order as deemed necessary; it would be wrong to think that other courts are not to do complete justice between the parties. If the power of modification of punishment/penalty were to be available to this Court only under Article 142, a very large percentage of litigants would be denied this small relief merely because they are not in a position to approach this Court, which may, inter alia, be because of the poverty of the concerned person. it may be remembered that the framers of the Constitution permitted the High Courts to even strike down a parliamentary enactment, on such a case being made out, and we have hesitated to concede the power of even substituting a punishment/penalty, on such a case

being made out. What a difference? May it be pointed out that Service Tribunals too, set up with the aid of Article 323-A have the power of striking down a legislative act.

22. The aforesaid had, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of long line of decisions of this Court, to which reference is not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience.

23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Sing's case, AIR 1963 SC 1909, that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. Of courts, this power is not as wide which this Court has under Article 142. That, however, is a different matter.

25. No doubt, while exercising power under article 226 if the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law makers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I

> have said so because the Industrial Disputes Act, 1947 was amended to insert section 11A in it to confer this power even on a Labour Court/ Industrial Tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practice or victimisation by the management. Even so, the power under section 11A is available to be exercised, even if there be no victimisation or taking recourse to unfair labour practice. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to Government employees or employees of the public corporations. I have said so because if need for maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/ revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionality of punishment/ penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/ penalty is shockingly disproportionate.

21. Otherwise also, in this case there are serious charges of corruption against the petitioner and those charges in five cases have been found proved and there can be nothing short of dismissal in such cases. In the case of State of Tamilnadu and Ors. v. K. Guruswamy, reported in 1996(7) SCC 114, the Apex Court, while considering the question of what appropriate punishment would be in the case of misconduct of corruption held;

2. This appeal is preferred against the
> judgment of the Tamil Nadu Administrative Tribunal. The respondent was a Sales Tax Officer. he was prosecuted for offences under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 as well as Section 201 of the Indian Penal Code. The trial

court found him guilty under the said provisions and sentenced him to imprisonment by its order dated 7.9.1976. On 31.10.1978, a notice was issued to the respondent by the State asking him to show cause why he should not be dismissed on the basis of the conduct which led to his conviction aforesaid. The respondent was dismissed on 27.11.1978 with reference to Rule 17(c) of Tamil Nadu Civil Services Rules which is evidently referable to proviso (a) to Article 311(2) of the Constitution of India. Subsequently, on 10.12.1981, the High Court dismissed the appeal preferred by the respondent against his conviction and sentence. The special leave petition filed by him has also been dismissed. After all this was over, the respondent approached the High Court by way of a writ petition questioning the order of his dismissal which was transferred to the Tamil Nadu State Administrative Tribunal. The Tribunal has set aside the said dismissal order on the ground that no ample opportunity was given to the respondent to show cause against the action proposed. The Tribunal holds that though the respondent did not show cause pursuant to the show-cause notice, yet it was obligatory upon the authority to consider the appropriate punishment called for in the facts and circumstances of the case. In out opinion, the said principle can make no difference in the facts of this case. Here, the respondent has been convicted for corruption and there can be nothing short of dismissal in such cases. No other lesser punishment can be contemplated in such cases.

22. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

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